

that CCS never sent PNC an email or letter or even made a telephone call in May 2009 expressing surprise or inquiring about the equipment deliveries. Gaura Affidavit ¶ 14.<sup>23</sup>

In what can only be characterized as a Freudian slip or a rare moment of candor, CCS acknowledges that “[n]o funds would have been disbursed to PNC if it [CCS] had not filed a Form 486. The sole reason that the funds were disbursed in violation of the rules was because PNC [sic] knowingly submitted a false Form 486.” Request for Review at 17. Of course, it was CCS, not PNC, that submitted the Form 486, and CCS did so because it wanted the benefit of E-rate funds and not because of any alleged “threats” by or “agreement” with PNC.

**E. CCS Violated E-Rate Rules By Not Paying The Non-Discounted Share.**

Under E-rate rules, a school is required to pay the non-discounted share. Other than the undiscounted portion of the Call Manager system, CCS has not paid for the undiscounted share, despite repeated requests by PNC to do so. PNC has provided CCS with copies of the invoices for the undiscounted share on multiple occasions and demanded that CCS pay these invoices. In fact, PNC’s counsel has sent demand letters to CCS, which CCS has ignored. Whitt Affidavit ¶¶ 10-11. CCS has violated E-rate rules by not paying the non-discounted share.

**F. Any E-Rate Violations By PNC Did Not Affect The Financial Integrity of The Program And Were Not The Cause of USAC’s Decision to Approve The Funding Requests Based On a Discount To Which CCS Was Not Entitled.**

PNC acknowledges that it did not comply fully with some of the requirements of the E-rate program. But PNC’s shortcomings did not affect the financial integrity of the program.

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<sup>23</sup> By the end of May 2009, nearly \$1,000,000 of equipment that PNC had ordered for CCS had been delivered to the school system’s NOC. Although CCS claims that “[n]one of this equipment was accepted by Cherokee,” Request for Review at 7, all of the equipment was signed for and accepted by CCS staff. Gaura Affidavit ¶ 15, Exhibit 3; Martin Affidavit ¶ 21.

And, in contrast to CCS's E-rate violations, PNC was not the cause of USAC's decision to grant the Funding Requests based on a discount to which CCS concedes it was not entitled.

Although CCS takes PNC to task for filing the Form 474 on April 23, 2009 and for drawing down E-rate funds, PNC did so because it was contractually obligated to provide the services and equipment that CCS had ordered and needed E-Rate funds in order to meet these obligations by the June 1 start date requested by CCS. At the time PNC filed Form 474, PNC had no knowledge of any problems by CCS in verifying its discount rate. Gaura Affidavit ¶ 11. PNC did not learn about any issues with CCS's discount until early May 2009, almost two weeks after it had filed Form 474. Colvard Affidavit ¶ 13; Gaura Affidavit ¶ 17. Had PNC known that the project was in jeopardy or that CCS was unable to verify the discount rate, PNC would not have filed Form 474. Gaura Affidavit ¶ 12.

At the time PNC filed the Forms 474, PNC had: (i) received an acknowledgement from USAC that CCS had filed Form 486; (ii) begun providing discounted, eligible services to CCS by commencing the implementation of the project; and (iii) submitted its Form 473 to USAC. Admittedly, at the time PNC filed the Forms 474, it had not invoiced CCS for the undiscounted amount, which was an oversight on PNC's part. Gaura Affidavit ¶ 13. However, PNC attempted to deliver these invoices to CCS in person in May 2009, which CCS refused to accept, and subsequently mailed these invoices to CCS. Whitt Affidavit ¶¶ 7 & 11.

There is no merit to CCS's argument that PNC has "not installed or maintained any of the internal connections" and has "delivered no services to Cherokee." Request for Review at 19-20. PNC delivered to CCS – and for almost a year CCS has been in possession of – nearly \$1 million in equipment ordered by PNC on CCS's behalf. In addition, PNC provided more than 800 hours of professional services, including basic maintenance services, prior to June 1, 2009 when CCS

directed that PNC cease further activity on the project. Furthermore, CCS's argument ignores that CCS prevented PNC from providing services that it had contractually agreed and for which it received E-Rate funds to provide. At all times, PNC was prepared to install and maintain the equipment that it had ordered on behalf of CCS and otherwise meet its contractual and E-Rate obligations, but CCS prevented it from doing so. Gaura Affidavit ¶ 20.

At the end of the day, CCS was in the best position to prevent any violation of E-rate rules and committed the acts that form the basis of the rule violations. To the extent CCS was concerned about the competitive bidding process, it should not have filed Form 471. Likewise, it should not have filed either Form 471 or Form 486 in light of concerns about its discount – concerns that had been raised five months earlier. And, most importantly, CCS should have filed Form 500 no later than April 29, 2009, when state auditors confirmed that CCS was not eligible for the discount it had claimed.

Instead, CCS filed the Form 471 and filed the Form 486 because it wanted E-rate funding. And, it held off filing Form 500 until January 2010 because it apparently was desperate to find some justification for the discount it had claimed. There was no need for CCS to engage FFL in June 2009 to confirm what state examiners had found in April 2009 – namely that the discount CCS had claimed could not be verified. To the extent another review was necessary, FFL certainly could have completed its review in less than four months, particularly when it took DPI only three days to determine that CCS was not entitled to the discount it had claimed.

Even more troublesome is CCS's failure to notify regulators of the problems it had uncovered. On June 10, 2009, PNC sent a letter responding to Dr. Lane's June 1, 2010 letter expressing PNC's willingness to work with CCS to reach a mutually beneficial solution and

suggesting that PNC and CCS seek guidance from USAC. For whatever reason, CCS would not agree to a joint meeting with USAC. PNC's letter also raised the possibility that CCS could conceivably seek to cancel the funding requests, even though they "have already been approved and partially performed." For whatever reason, CCS did not file a Form 500 seeking to cancel the funding requests in June 2009, waiting instead to do so until January 2010. Whitt Affidavit ¶ 9; Exhibit Y to Request for Review.

Had CCS not filed the Form 471 or Form 486, no E-rate funds would have been paid to PNC. Had CCS filed Form 500 in April, May, or even June 2009, the equipment that PNC had ordered could have been returned and the monies that PNC had received from USAC could have been refunded, which is not the case now. The FCC should not condone CCS's conduct or its unreasonable delay, which has prejudiced PNC.

#### **IV. CONCLUSION**

For the foregoing reasons, the Commission should deny the Request for Review.

Respectfully submitted,



By: \_\_\_\_\_

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Counsel for Professional Network Consultants, Inc.

Dated: May 3, 2010

## CERTIFICATE OF SERVICE

I, Joan Stewart, hereby declare that copies of the foregoing Opposition to Request for Review were delivered via overnight express or hand delivery on this day, May 3, 2010, to the following:

David Capozzi, Esquire  
Acting General Counsel  
Universal Service Administrative Company  
2000 L Street, N.W., Suite 200  
Washington, D.C. 20036

Letter of Appeal  
Schools and Libraries Division – Correspondence Unit  
100 S. Jefferson Road  
P.O. Box 902  
Whippany, NJ 07981

Sharon Gillett  
Bureau Chief  
Wireline Competition Bureau  
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Mark J. Palchick, Esquire  
Womble Carlyle Sandridge & Rice  
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Washington, DC 20005

  
Joan Stewart

***Before the***  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review of the	)	CC Docket No. 02-6
	)	CC Docket No. 96-45
Decision of the	)	
Universal Service Administrative Company	)	File No. _____
	)	
By	)	
	)	
<b>Cherokee County School District</b>	)	
	)	

**AFFIDAVIT OF JEFF GAURA**

1. My name is Jeff Gaura. I have the capacity to provide this Affidavit and am over the age of 21 and under no disability. I am a citizen and resident of Monroe, North Carolina.

2. I am the President and founder of Professional Network Consultants (PNC), a company specializing in technical services and project management for the implementation of IP Telephony, wireless solutions, network security, VPN connectivity, MS Exchange migrations and Citrix configurations and installations. I began my professional career as a teacher in North Carolina. After a five-year teaching career, I developed a passion to bring technology to schools and began work as a Senior Technical consultant for Computer Network Power where I specialized in designing and implementing various technical platforms for schools and school districts. I founded PNC in 1998 to continue this mission.

3. PNC has served as a vendor of technology equipment and services to Cherokee County Schools (CCS) since 2004. In 2007 (Funding Year 10), CCS posted a Form 470 seeking bids for services and equipment to be provided pursuant to the federal Schools and Libraries (SLD) program (E-Rate Program). PNC submitted a bid to provide the requested Priority Two services to CCS and was selected as the winning bidder. Priority Two services are funded based on the school's discount rate, which can vary from year-to-year. Based on its discount rate for Funding Year 10, CCS received funding for Priority 2 services for only two schools – Peachtree Elementary and Mountain Youth – and PNC provided the equipment and services at these schools.

4. In 2008 (Funding Year 11), PNC again submitted a bid in response to a Form 470 posted by CCS. CCS requested funding for both Priority Two and Priority Two services and equipment. PNC was selected as the winning bidder and entered into a contract with CCS dated February 4, 2008. A copy of this contract is attached to my Affidavit as Exhibit 1.

5. E-Rate program rules require that a valid contract be in place prior to an applicant filing the Form 471. I signed the contract on behalf of PNC for Funding Year 11 services to be provided to CCS on February 4, 2008. Phillip Colvard of PNC hand-delivered the executed contract to Anthony Martin, Wide Area Network (WAN) engineer for CCS, on February 6, 2008. CCS subsequently filed the Form 471 for Funding Year 11 on February 7, 2008.

6. I was expecting to receive a counter-signed contract executed by CCS at some point after February 6, 2008 and made repeated requests for CCS to provide me a



copy. After a number of requests, Terelle Beaver, Chief Financial Officer for CCS, indicated that the school district's approval process had changed. I worked with Ms. Beaver to finalize the contract consistent with this new approval process. On or about May 22, 2008, I received a telephone call from Ms. Beaver, who told me that CCS considered February 4, 2008 to be the effective date of the contract. Consistent with that conversation, in the fully executed version of the contract that I received from CCS, a copy of which is attached to my Affidavit, the CCS's Superintendent signed the contract on behalf of CCS and initialed the effective date of February 4, 2008.

7. On February 24, 2009, I met with Jeana Hardin, Director of Instructional Technology and Public Relations for Cherokee. In Funding Year 12, CCS received bids to provide internal connections and basic maintenance of internal connections from PNC and another provider, and CCS selected the other provider. I asked to meet with Ms. Hardin to remind her that CCS had signed a multi-year contract with PNC for basic maintenance services and asked why PNC's bid had not been selected for Funding Year 12. During our meeting, Ms. Hardin expressed concern that CCS had not yet received its funding for Funding Year 11. However, at no time in this meeting did Ms. Hardin raise any issue about the 90% discount rate claimed by CCS or express concern that CCS could not defend its discount rate. In fact, several times during this meeting she complained that she had not received any updates from Mr. Martin about where he was with the E-Rate process and that he was keeping her "out" of the process, which left her in the "dark."

8. In her Affidavit (¶¶ 13-14), Ms. Hardin alleges that I threatened to cut off the phone service at Mountain Youth and Peachtree schools unless she changed the

*Service Provider information on the E-rate applications for Funding Year 12 to PNC.*

This allegation is false, and I never made any such threat, either at the February 24, 2009 meeting or at any other time. PNC had no control over the equipment or the licenses that CCS was using in order to provide telephone service at the Mountain Youth and Peachtree schools and was in no position to “cut off” service, notwithstanding Ms. Hardin’s suggestion to the contrary.

9. In 2007, CCS decided to implement a district wide deployment of Cisco’s Unified Communications platform. Because only Peachtree and Mountain Youth received Priority Two funding during Funding Year 10, CCS made the decision to deploy stand-alone Cisco systems at these schools that could later be integrated into a new district-wide communications platform. However, both Peachtree and Mountain Youth continued to experience significant phone problems, which were due to the copper wire provided by the local service provider. CCS asked Cisco to help with a solution. Cisco offered to provide a temporary Call Manager system, which provides centralized call processing functionality, an arrangement that would last for three (3) months and would allow these two schools to access phone lines at the CCS Network Operations Center (NOC). PNC installed the Call Manager system for CCS. Cisco made very clear that this was a temporary solution and CCS needed to find a permanent solution, whether or not it could be funded by the E-Rate program. At the end of the initial three month trial, CCS contacted Cisco and asked for an extension, indicating that they expected to be able to fund the system through E-Rate and did not want to pay for it out-of-pocket if the cost could be covered by the E-Rate program. Cisco approved this extension. However, at the end of the second extension, CCS again asked Cisco for another three (3) month

extension. As explained in an February 16, 2010 email from David Crowell of Cisco to Ms. Hardin, a copy of which is attached to my Affidavit as Exhibit 2, Cisco only agreed to one additional extension based on Ms. Hardin's representation that E-Rate funding was imminent. PNC had no control over whether or not Cisco granted any extension of the license for CCS to use the Call Manager system. As Mr. Crowell states in his email, he is disturbed by Ms. Hardin's comments that the temporary license "was leveraged to get CCS to proceed with their ERATE filing under duress." CCS was in direct communication with Cisco regarding this temporary license. Cisco made clear that CCS needed to find a permanent solution for the Call Manager system, whether or not it could be funded using E-Rate funds. CCS made the decision to wait for E-Rate funds – a decision with which PNC was not involved.

10. On April 16, 2009, Phillip Colvard and Dan Whitt met with Ms. Hardin and Ms. Beaver to discuss the E-Rate project. Although I was not present at this meeting, later that day both Mr. Whitt and Mr. Colvard advised that CCS had set a start date of June 1, 2009 for our project and would authorize the filing of the Form 486 so that PNC could begin to order the necessary equipment.

11. On April 21, 2009, Mr. Martin sent Mr. Colvard an email, a copy of which was forwarded to me, indicating that the Form 486 had been filed on April 20, 2009. I subsequently authorized PNC to file Form 474, Service Provider Invoice, to draw down funds that were necessary for PNC to purchase the equipment for the project in time to meet the June 1 start date. The Forms 474 were filed by PNC staff on April 23, 2009. At the time PNC filed the Forms 474, I had no knowledge of any problems by CCS in "verifying its discount rate," as it now alleges in its Request for Review (p. 5).

12. I would not have authorized the filing of the Forms 474 had CCS provided any indication that the project was in jeopardy or that it was unable to verify the discount rate. The reason that the Forms 474 were filed was because PNC was contractually obligated to provide the services and equipment that CCS had ordered and needed E-Rate funds in order to do so. In fact, Ms. Beaver was fully aware that PNC planned to draw down the funds immediately, which was consistent with the terms of our contract.

13. At the time PNC filed the Forms 474, PNC had: (i) received an acknowledgement from USAC that CCS had filed Form 486; (ii) begun providing discounted, eligible services to CCS by commencing the implementation of the project; and (iii) submitted its Form 473 to USAC. Admittedly, at the time PNC filed the Forms 474, it had not invoiced CCS for the undiscounted amount, which was an oversight on PNC's part.

14. In May 2009, PNC began ordering the equipment for the CCS project. All equipment was shipped to CCS's Network Operations Center (NOC). Contrary to Dr. Lane's assertion in his Affidavit (§ 9), no equipment was delivered directly to a school. If the equipment was not "anticipated by CCS," as alleged in the Request for Review (p. 7) or if PNC had agreed to "not move forward with the project until questions regarding the discount were answered," as Ms. Hardin claims in her Affidavit (§ 20), one would expect that CCS would have refused to accept delivery of the equipment or returned the equipment to PNC – neither of which CCS did. It also is noteworthy that I never received an email, letter, or even a telephone call from anyone at CCS in May 2009 expressing surprise or "alarm" or even inquiring about these equipment deliveries.

15. *By the end of May 2009, nearly \$1,000,000 of equipment that PNC had ordered for CCS had been delivered to the school system's NOC, where (with the exception of a Call Manager system) it still sits unused to this day. Although CCS claims in its Request for Review (p. 7) that "[n]one of this equipment was accepted by Cherokee," all of the equipment was signed for and accepted by CCS staff. A sample of the Federal Express delivery confirmation for some of the equipment that was signed by "A. Martin" on May 21, 2009 is attached to my Affidavit as Exhibit 3.*

16. On June 1, 2009, I received a letter from Dr. Lane asking PNC to "cease any activity regarding the Year 11 Form 471 funding commitments." A copy of this letter is attached as Exhibit X to the Request for Review. The only reason given by Dr. Lane was that CCS had not issued Purchase Orders for the equipment. Dr. Lane's June 1, 2009 letter made no mention of the alleged agreement by PNC to "not move forward with the project until questions regarding the discount were answered" or of any problems by CCS in verifying its discount. As PNC clearly explained to CCS in its June 10, 2009 response, a copy of which is attached as Exhibit Y to the Request for Review, purchase orders were not required under the terms of our contract with CCS or expected based on past practices.

17. In its Request for Review (p. 13), CCS states that it repeatedly "advised PNC that it might not qualify for the 90% discount, and that it would not therefore qualify for Priority II funding." But this statement ignores that PNC did not learn about any issues with the discount rate until early May 2009, after PNC had filed Forms 474. Furthermore, whenever representatives of CCS advised PNC of the difficulties it had encountered in verifying the discount rate, CCS attempted to downplay these difficulties,

suggesting, in Ms. Hardin's words, that things "might still come out okay." In fact, PNC was led to believe throughout the summer and into the fall of 2009 that CCS was continuing to review documentation in an attempt to justify its discount level.

18. PNC did not learn of the magnitude of the problems with CCS's discount or the length of time during which CCS had been aware of such problems until PNC received documents in response to a February 3, 2010 request for records from the North Carolina Department of Public Instruction ("DPI") under the North Carolina statute regarding public records. *See* N.C. Gen. Stat. § 132-1 et seq. This request was the result of the investigation conducted by PNC's attorneys after receipt of a letter from CCS to USAC dated January 11, 2010. Copies of some of the documents produced by DPI in response to PNC's request are attached collectively as Exhibit 4 to my Affidavit.

19. The documents produced by DPI make clear that CCS has been aware since at least November 2008 of potential problems with the discount level for which it had requested funding from USAC. Yet, CCS decided to proceed with its funding requests despite these potential problems. Furthermore, by its own admission, CCS knew that it did not qualify for the discount it had claimed by the end of April 2009. But, for whatever reason, CCS chose not to notify USAC of this fact or take any action to cancel the funding requests until January 2010. Had CCS cancelled the funding requests in April, May, or even June 2009, the equipment that PNC had ordered could have been returned and the monies that PNC had received from USAC could have been refunded. At this late date, neither Cisco nor PNC's vendors will permit PNC to return the equipment, and the funds that PNC received from USAC have been spent.

20. In its Request for Review (pp. 19-20), CCS argues that PNC has “not installed or maintained any of the internal connections” and has “delivered no services to Cherokee.” CCS’s argument overlooks the fact that it has been in its possession of almost \$1 million in equipment ordered by PNC on CCS’s behalf for almost a year and that PNC provided more than 800 hours of professional services, including basic maintenance services, prior to June 1, 2009 when CCS directed that PNC cease further activity on the project. Furthermore, CCS’s argument ignores that CCS prevented PNC from providing services that it had contractually agreed and for which it received E-Rate funds to provide. At all times, PNC was prepared to install and maintain the equipment that it had ordered on behalf of CCS and otherwise meet its contractual and E-Rate obligations, but CCS prevented it from doing so.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Jeff Gaura

Date: April 30<sup>th</sup>, 2010



## Exhibit 1



Professional Network Consultants

Connecting with Technology

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voice video data

## **CHEROKEE COUNTY SCHOOLS INTERNAL CONNECTIONS AGREEMENT FOR BASIC MAINTENANCE**

Professional Network Consultants, Inc.

This Professional Services Agreement ("Agreement") is entered into between Professional Network Consultants, Inc. (hereinafter referred to as "PNC") and the company named below (hereinafter referred to as the "Customer").

1. **Services.** PNC will provide products and services to Cherokee County Schools beginning July 1, 2008 thru June 30, 2011 pursuant to the terms and conditions of this Agreement. This is a multi-year agreement. Services include both labor to complete the Internal Connections project and labor in the form of on-going maintenance services. The provisions of this Agreement will also apply to future engagements, as negotiated and agreed to between Cherokee County Schools and PNC. Any statements made, if any, as to the estimated time schedule required to perform services are only estimates and are not binding on PNC. PNC will make every effort to complete the service within the estimated time schedule and will notify Customer when it is known that projected deadlines cannot be met and give the reason(s) for delay.

2. **Relationship.** PNC is Customer's independent contractor for providing the services. As such, PNC shall have the right to determine the method, details and means of performing the services to be performed for Customer. Customer shall, however, be entitled to exercise general power of supervision over the results of the services performed by PNC.

### 3. **Payment**

A. **Service Blocks.** PNC will invoice for its services not covered by USAC approved Basic Maintenance in advance in blocks of 50 hours at PNC's then-current rates. Invoicing for USAC approved Basic maintenance is detailed below. The rate per hour will vary depending on the type of services to be performed and the size of the time block purchased (with the larger blocks of time having lower per hour rates). PNC will not increase its rates charged to Customer for a period of at least six (6) months from the date of this Agreement. Customer must pay for a block of time before services can begin being charged against that block, unless otherwise agreed by PNC (in which case Customer will pay for such services within 10 days after the date of invoice). PNC will track all hours billed to Customer's time block and will provide Customer upon request with detailed descriptions of services performed and associated hours charged. When the balance of hours remaining on a time block approaches zero, PNC will invoice Customer for the next block of time. Hours not used on a time block do not expire and remain available for future services provided to Customer. Hours billed against the time block are billed in 15 minute minimums for telephone calls over 1 minute and are billed at 2 hour minimums for on site visits. Straight time applies to all work performed between the hours of 7 AM and 7 PM Monday through Friday. Time and a half is charged for hours work Monday through Thursday between the hours of 7 PM and 7 AM. Double time applies to all weekend and holiday work. Weekends are defined as Fridays beginning at 7 PM and ending Monday morning at 7 AM. Time and a half and double time only apply when the customer's circumstances specifically require that our engineers work during the previously specified hours. Any statements made, if any, as to the overall fees required to perform services are only estimates and are not binding on PNC.

B. **Network Down Situations.** Customers having a 1) positive time balance or 2) whose network down situation is caused by or related to items and services covered by USAC's Basic Maintenance agreement, are eligible for immediate response during network down situations. A "network down situation" is defined as any instance in which business is severely impacted and the instance affects eighty percent (80%) or more of the employees in eighty percent (80%) or more of the locations they conduct business. Immediate response is deemed to be within two (2) hours upon PNC learning of the network down situation, regardless of events previously scheduled by PNC.

C. **Reimbursable Expenses.** Customer will reimburse PNC for any expenses incurred on behalf of Customer (such as necessary travel (see Section 3 B) and overnight expenses). PNC will invoice Customer for such expenses at least every two (2) weeks. Payment will be due within ten (10) days of the date of the invoice. It is Cherokee County School's understanding that there will be no charge for overnight expenses or incidental travel not already documented in current proposals.



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D. Product Sales. PNC will invoice customers for purchased product once it has confirmation from the distributor. Invoices for equipment will be due upon receipt of equipment.

E. USAC approved transactions for Internal Connections. Both PNC and Cherokee County Schools understand that transactions that are funded and approved by USAC will be handled in the following manner.

- For each approved FRN (Funding Request Number), Cherokee County Schools will complete a USAC Form 486 to certify that it accepts the funding for the location associated with the specific FRN. At this point, Cherokee County Schools will assume no liability for USAC's payment to PNC. There will be four invoices created for each FRN for Internal Connections.
- PNC will invoice USAC immediately for the approved discount percentage for each FRN. A copy of each invoice will be available to Cherokee County Schools, upon request.
- PNC will immediately invoice Cherokee County Schools for the undiscounted percentage of USAC eligible equipment for each FRN. This will be due immediately upon receipt of equipment.
- PNC will also create an invoice for each location's ineligible product/services. This invoice will be due immediately upon receipt of the equipment.
- PNC will also create an additional invoice for Cherokee County School's undiscounted percentage of the USAC eligible labor/professional services. This will be due upon satisfactory completion of the installation.

E. USAC approved transactions for Basic Maintenance. At the start of each month, PNC will invoice USAC for the previous month's maintenance. At this point, Cherokee County Schools will assume no liability for USAC's payment to PNC for Basic Maintenance. In addition, at the start of each month, PNC will invoice Cherokee County Schools for the undiscounted percentage of the current month's maintenance. Therefore the Customer will be billed in advance for its percentage share of Basic Maintenance services and USAC will be billed in arrears.

F. Interest Charges. Customer will pay an interest charge on any amounts not paid when due, at the rate of 8% annually on any unpaid balance.

#### 4. Intellectual Property.

A. Definitions. For purposes of this Agreement, (i) "Intellectual Property" means ideas, designs, concepts, inventions, improvements, trade secrets, know-how, works of authorship, techniques, or other intellectual property acquired, used or developed by PNC (or its contractors) in connection with this Agreement (excluding any of Customer's trademarks), (ii) "Development Tools" means routines, libraries, tools, methodologies, processes or technologies acquired, used or developed by PNC (or its contractors) in connection with this Agreement, and (iii) "Work Product" means any documentation or reports produced as a result of PNC's services for Customer and delivered by PNC to Customer in the course of performing such services.

B. Ownership. PNC hereby grants Customer a non-exclusive, non-transferable license to use the Work Product solely within Customer's organization for its internal business purposes. The parties agree that any Intellectual Property and Development Tools will remain the sole property of PNC. Customer shall have no interest in or claim to such Intellectual Property or Development Tools. As such, nothing in this Agreement shall be construed to preclude or limit PNC from re-using, developing, modifying, enhancing, marketing and selling for itself or others the Intellectual Property and Development Tools.

5. Third Party Products. Customer acknowledges that PNC purchases Products from third party manufacturers for resale to Customer. The manufacturer of the Products may provide a warranty directly to customers purchasing the Products. PNC agrees to provide a copy of such warranty to Customer. Customer understands and agrees that PNC shall not be liable to Customer in any manner with respect to such Products, and the manufacturer's warranty provided to Customer by the manufacturer shall be Customer's exclusive remedy. PNC MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO PRODUCTS PROVIDED BY PNC, INCLUDING WITHOUT LIMITATION WARRANTIES RELATING TO DESIGN, CONDITION, INFRINGEMENT, TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.



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getting with technology

6. **Termination.** This Agreement may be terminated by either party at any time upon 30 days written notice sent by certified mail, postage prepaid, addressed to the other party at the address below. Upon termination by either party, all items to be provided to Customer, whether complete or not, will be delivered to the Customer (unless Customer is in breach of this Agreement), and Customer will pay PNC for all services rendered and all items provided by PNC up to the termination date. Customer will be refunded any unused portion of service blocks purchased. Sections 3, 4, 10 and 11 of this Agreement shall survive termination.

7. **Customer Assistance.** Customer agrees to assist PNC as reasonably requested in order for PNC to perform the services. Such assistance may include, without limitation, provision of information regarding the services and provision of a suitable work area which complies with all applicable safety and health standards. Customer shall also notify PNC as to who will be Customer's "Project Manager", who will be authorized to render prompt decisions on issues involving the services. It will be PNC's responsibility to Project Manager circuit vendors and related affiliates during installation and requested service changes. PNC will include all designated Cherokee County School employees in the communications, and all parties will be kept informed of scheduled dates of installation and change. However, PNC cannot be held responsible for telecommunications carriers failure to respond to requests in a timely manner but shall only communicate these changes.

8. **Backups.** Customer understands that data and application backup is Customer's responsibility. Customer will schedule, monitor, audit and perform backups of data and applications immediately prior to any engagements that require PNC employees and contractors. In the event of data or application loss, PNC will use its best efforts to restore data and applications to their previous state. However, in no event shall PNC be liable for loss of data or applications of Customer, it being understood that Customer shall be responsible for insuring proper and adequate back-up and storage procedures.

9. **Warranty.** PNC warrants that it will perform the services in a workmanlike and professional manner. Customer must notify PNC in writing of any error or omission in the services immediately, and no later than thirty (30) days after such services have been completed. Customer waives any claim relating to any breach of warranty of which Customer does not timely notify PNC hereunder. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PNC DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT OR THE SERVICES RENDERED.

10. **Limitation of Liability; Indemnification.** In no event shall PNC be liable for consequential, incidental, special, indirect or punitive damages, including without limitation damages due to loss of profits, loss of data, or business interruption. Any liability of PNC to Customer for damages, regardless of form or action, shall be the greater of \$5,000 or the amount paid by PNC's insurer on Customer's claim, as determined by PNC's insurer. A copy of the coverage carried by PNC shall be made available to customer at their request. Customer shall defend, indemnify and hold harmless PNC and its directors, officers, employees and agents from and against all claims, liability, losses, damages and expenses (including attorneys' fees and court costs) arising from or in connection with any acts or omissions of Customer, its directors, officers, employees and agents (including without limitation due to the use or application of PNC's services or Products by Customer or any direct or indirect purchaser or licensee of Customer).

11. **Non-Solicitation.** Customer recognizes that PNC's retention of its employees and independent contractors is essential to the business conducted by PNC. PNC has exerted significant effort and diligence in hiring employees and developing working relationships with contractors who are capable of performing services on behalf of PNC. For purposes of protecting and preserving such employee and contractor relationships of PNC, Customer covenants that it shall not, directly or indirectly, employ, solicit, engage or otherwise enter into a contractual relationship with a PNC employee or contractor who has provided services to Customer on behalf of PNC within the preceding three (3) months, unless approved in advance in writing by an officer of PNC. Customer acknowledges that the measure of damages resulting to PNC if Customer should breach this Section of the Agreement would be difficult to ascertain. Therefore, Customer agrees that Customer shall pay PNC the liquidated amount equal to one-third (1/3) of the employee's annual salary or in the case of a contractor, 100 hours of services performed by the contractor, as the agreed measure of damages (and not a penalty against Customer) for a breach of this Section of the Agreement.

12 Miscellaneous. If any provision of this agreement is held to be invalid or unenforceable, all other provisions shall continue as valid and enforceable. If Customer fails to make payment to PNC, PNC may employ an attorney to enforce its rights and remedies, and Customer agrees to pay PNC reasonable attorneys' fees plus all other reasonable expenses incurred by PNC in exercising its rights and remedies. PNC shall not be liable for any failure to perform any of its obligations due to circumstances or conditions beyond its reasonable control. The parties acknowledge that they have read and understand this Agreement and agree to be bound by its terms and conditions. This Agreement will become effective upon acceptance by PNC in North Carolina. This contract has been executed in North Carolina and shall be controlled by the laws of the State of North Carolina, excluding its conflict of laws principles. Customer may not assign or transfer this Agreement in whole or in part to any third party without the prior written consent of PNC. This Agreement represents the entire agreement between the parties and supersedes all prior statements, oral or written, with respect to its subject matter. No modifications of this Agreement shall be effective unless in writing and signed by both parties.

ACCEPTED AND AGREED:

PNC name address and phone:

Professional Network Consultants, Inc.  
5101 Sugar & Wine Rd  
Monroe NC  
704-583-4200

Customer name, address and phone:

Cherokee County Schools  
911 Andrews Rd  
Murphy, NC 28906

Authorized Signature: 

Printed Name: Jeff Gaura


Title: President

Date: Feb 04, 2008

Authorized Signature: 

Printed Name: Dr. Jeanette Hedrick

Title: Superintendent

Date: Feb 04, 2008 



Professional Network Consultants

5101 Sugar and Spice Trail

Monroe, NC 28110

office: 704.583.4200

www.professionalnetworks.com

voice video data

## BASIC MAINTENANCE OF INTERNAL CONNECTIONS

The USAC Schools and Libraries Division issues strict guidelines regarding the products and services that are eligible for funding under the eRate program. Each year they publish a list of eligible products for Internal Connections for that funding year. It is this list of eligible products for Internal Connections that drives the eligible services that can be performed under Basic Maintenance of Internal Connections. Essentially, the only Basic Maintenance services that can be funded by USAC SLD are those performed on eligible Internal Connections products that are being used at eligible locations for educational purposes.

PNC will perform two types of labor professional services for Cherokee County Schools:

**Basic Maintenance of Internal Connections.** This will be strictly limited to Basic Maintenance on eligible products funded under Internal Connections. Basic Maintenance ensures the necessary and continued operation of eligible Internal Connection components at eligible locations. Basic Maintenance of Internal Connections provides those services required to maintain the proper hardware and software operation and functionality of eRate eligible products within the school district's networks, and includes routine network maintenance. These services include but are not limited to troubleshooting, repairing, and restoring services. These Basic Maintenance of Internal Connections services are necessary when a connection would not function and serve its intended purpose without being repaired. This Basic Maintenance of Internal Connections will be provided for both the eligible products installed during this eRate year as well as products purchased during prior eRate periods. It is understood that products purchased during prior eRate periods will only be maintained under this contract with eRate funding to the extent that those products are part of the current list of eligible Internal Connections products. Additional information about eligibility requirements of specific products and services can be found at <http://www.usac.org/sl> and <http://www.universalservice.org/sl/about/eligible-services-list.aspx>. Basic Maintenance of Internal Connections does NOT include services to maintain operations of products that are not on the SLD eligible products list, nor services to enhance the utility of equipment beyond the transport of information, nor services to diagnose problems beyond those needed to maintain the product's ability to transport information.

**General Computer Support Labor Block.** This category is for all professional services requested by Cherokee County Schools that do not fall under the Basic Maintenance of Internal Connections described above. This category of services is invoiced and tracked separately from Basic Maintenance of Internal Connections services.

For the term of this agreement, 7/1/2008 through 6/30/2011, PNC will provide Basic Maintenance of Internal Connections services to Cherokee County Schools (CCS) for a fee of \$31,200.00 per month. This fee is for an average of about 18 hours of Basic Maintenance of Internal Connections services per month per location for an average of 16 locations and is based on estimated minimum requirements represented by the locations and student populations expected during the term of this contract. Since this agreement represents a minimum level of Basic Maintenance of Internal Connections services, PNC and CCS understand that PNC will usually not be able to complete all Basic Maintenance of Internal Connections service required each month and that CCS personnel will make up the difference between the services provided by PNC under this agreement and the level of service needed. Both PNC and CCS also understand that during the term of this agreement, as the list of eligible products changes at SLD, so will the list of products on which PNC can provide Basic Maintenance of Internal Connections services. However, regardless of changes to the eligible equipment and services, the amount charged for Basic Maintenance of Internal Connections services shall remain constant. PNC will perform Basic Maintenance of Internal Connections only on the items that are contemporaneously approved by SLD as eligible.

On or Before November 1 of each year, PNC will deliver a record of service hours provided during the immediately preceding calendar year. PNC and Customer will review the service hours provided and project hours for the next calendar year. The fee for Basic Maintenance of Internal Connections may be adjusted for the following year of the term of the agreement (i.e. July 1, 2009-June 30, 2010 and July 1, 2010-June 30, 2011), if the projected service hours vary by more than 10% on the anticipated average of 60 hours per week.

## **Exhibit 2**

From: David Crowell <[dacrowell@cisco.com](mailto:dacrowell@cisco.com)>

Date: Tue, 16 Feb 2010 01:41:16 -0500

To: "Hardin, Jeana" <[jeana.hardin@cherokee.k12.nc.us](mailto:jeana.hardin@cherokee.k12.nc.us)>, "Beaver, Terelle" <[terelle.beaver@cherokee.k12.nc.us](mailto:terelle.beaver@cherokee.k12.nc.us)>, "Lane, Stephen" <[stephen.lane@cherokee.k12.nc.us](mailto:stephen.lane@cherokee.k12.nc.us)>

Cc: "Jody Gordon (jogordon)" <[jogordon@cisco.com](mailto:jogordon@cisco.com)>

Subject: Re: Learning Points

Jeana,

I appreciate the response and let me try and further clarify a few of the points in your email. I have also been made aware of a few internal emails and I think it is important to clear up a few specific comments/questions.

1. there were no Cisco Learning Credits purchased with the original Call Manager Express solutions implemented at the first three locations a few years ago. Training and knowledge transfer were to be included in the implementation services with PNC (due to resource turnover within the district, I cannot comment whether this occurred or what expectations had been communicated to PNC by your predecessors). With regards to future Cisco Learning Credits, these *were* being offered on the NON ELIGIBLE portion of your ERATE filing (still outstanding) but were *not* included in the ELIGIBLE portion (currently in question) because PNC had included training/knowledge transfer in their implementation services. We actually did discuss Cisco Learning Credits and the possible inclusion/evaluation on future CCS opportunities in our meeting in early December.
2. With regards to the return of the equipment, as we have discussed on numerous occasions, CCS placed an order with PNC (understanding this authorization is in dispute) which was fulfilled through an authorized Cisco distribution partner (Ingram Micro). Because PNC placed the order with Ingram and this order was fulfilled, invoiced and paid through a standard purchasing process, PNC would have to be the one to initiate the return request and work with Ingram to determine whether the gear can be returned (based on factors such as purchase value and timeliness of the request). If the request is outside the normal return guidelines (which the CCS order is), Cisco may be engaged to determine whether approval can be provided *after the return request has been initiated*. Which is why I had recommended that you speak to PNC directly.
3. The most disturbing of the comments revolves around the "trial" license that has been referenced in numerous emails, including the inference that this was leveraged to get CCS to proceed with their ERATE filing under duress so let me address this point specifically. More than 3 years ago, after several meetings, ROI discussions and on-site demonstrations, CCS made the decision to move forward with a district wide deployment of Cisco's Unified Communications platform. However, there were two/three schools (you reference the names below) that were in a critical state with their existing phone systems and an immediate solution was needed for these locations. The decision was made to implement these schools as stand alone solutions (Call Manager Express), submit an ERATE filing for the remaining locations (including the centralized system) and then integrate these schools (as well as remaining locations) once the core components of the centralized system were funded/purchased. The CME license that had been purchased for these locations could be converted to an SRST license (Survivable Remote Site Telephony) at no cost with Cisco and these stand alone locations would have built in redundancy as a part of the central Call Manager. During the ERATE process (which spanned two filings, two previous directors and almost three years) these locations began to experience serious voice problems due to the poor copper facilities (phone lines) being provided by the local service provider. I was contacted by CCS to come up with an alternative solution to address these issues. It was agreed that the best solution would be to subscribe to PRI service at the NOC and go ahead and integrate these schools. However, with the pending ERATE filing, CCS did not want to purchase the hardware/software/licensing required and asked if there was anything I could do because voice services in these locations were critical to student/teacher safety. I offered to provide all hardware/software/licensing to CCS on a limited basis (90 days) while potential purchase/budget or ERATE approval were evaluated (and PNC agreed to install and integrate the schools at no cost to the district). At the end of the three month period, I was contacted by CCS and asked if I would extend the evaluation equipment/licensing an additional 3 months because CCS was receiving positive responses internally on inquiries with USAC regarding their filing and were not interested in purchasing the required hardware/software if this would possibly be funded through ERATE. This was difficult to do but I agreed to try and get this extended. At the end of 6 months, I was again contacted by CCS and asked if I would extend this an additional 3 months (9 months total) pending final ERATE approval (which CCS communicated to me was imminent). In order to help CCS and because of the commitment I had made to help CCS through this tough time I was willing to go back and beg for one final extension but I did communicate this would be the last extension I could get and if the ERATE funding did not come through, we would need to evaluate a purchase of the gear because I could not continue to provide the evaluation hardware/software/licensing. This was originally a 90 day evaluation that had been installed in production for over 9



months at no cost to the district. As the date approached for the license expiration, I did inquire about the status of the ERATE filing but this was only in CCS interests. I wanted to make sure we/CCS had a plan in place to address voice service at these schools prior to the expiration of the license (which ultimately was addressed through the ERATE award currently in dispute). During this 9 month period, I received countless emails from CCS very appreciative of what we had done to address the issues/problems at these schools and for extending the evaluation solution as long as we did. The majority of the updates that I received regarding status of the ERATE filing came proactively from CCS so I am confused how my actions in support of CCS could be so misrepresented. Cisco did not generate the original bill of materials (this was done primarily by CCS personnel with support of PNC engineers), had no participation in the methodology for calculating discount percentages, did not participate in original RFP creation/issuance and provided a level playing field for partners to respond to the 470 request by making our "ERATE PROMOTION" available to any partner interested in responding.

Jeana, as the manufacturer representative, my job is to support you and the district in evaluation of Cisco technology solutions to address the education and safety of CCS students and faculty regardless of integration partner. Who you choose to work with to implement Cisco solutions is at the sole discretion of the district and I have supported these partner engagements equally (including the recent engagements with AT-NET). I value your business and we/Cisco are committed to our education customers. Jody Gordon (my Regional Manager) and I are willing to work with Cherokee in the resolution to any outstanding issues and would be interested in meeting with CCS to address any ongoing concerns.

Thanks Jeana and feel free to give me a call to discuss. I hope to have an update on the current maintenance status of Call Manager by Wednesday at the latest (I think you saw my request and the response from your Service Manager).

-David